INDEX

OF

PRINCIPAL MATTERS.

ACTION.

PAGE

1. An action in which the plaintiffs simply allege themselves owners of property in common with the defendants, cannot preclude the latter from disputing the rights of the former, and setting up title in opposition to the claim made. It is, in this respect, an action of revendication, and not of partition, and involves the prescription of ten and twenty years.
Davis's Heirs vs. *Elkins et al.* 135

2. In a possessory action to regain a space of ground behind the levee, and between it and the public street in the city of Lafayette, the plaintiff claimed as riparian owner, and having possessed as such for more than a year, the *locus in quo* supposed to be susceptible of private ownership: *Held*, that the question, whether it be in fact the plaintiff's property, or has been *destined to public use*, is one of title which cannot be inquired into. No testimony is admissible except as to the fact of possession and disturbance.....*Gleisse and Holland* vs. *Winter*, 149

3. A corporation can maintain a petitory action to remove nuisances and clear the banks of rivers, by showing that the land occupied is destined to public use..... *ib.*

4. In a petitory action, the vendor of the plaintiff cannot be made a party on an allegation of the defendant that he obtained his title fraudulently from the government under the pre-emption laws.
Jones et al. vs. *Purvis et al.* 288

5. So in a petitory action, the record and judgment of eviction in a possessory action between the same parties and their vendors and warrantors about the same land, cannot be given in evidence..... *ib.*

6. An action for the breach of a contract of passage made by the wife with the captain of a ship, will be considered as *personal*, under the article 107 of the Code of Practice, in which the husband has the right to prosecute and recover damages in his own name.....*Holmes* vs. *Holmes*, 348

ACTS, PUBLIC AND PRIVATE.

PAGE.

1. If no original whatever of a notarial act can be found in the office of the notary, a copy certified by him, with his seal appended, would be still admissible in evidence, and have effect, because, it must be presumed from the official character of the notary, to be a copy of an original which once existed.. .....*Montreuil et al.* vs. *Pierre et al.* 356

2. The loss or destruction of the original act will rather be presumed or supposed, than that the notary was guilty of forgery in giving a certified copy of an act that never existed..... *ib.*

3. The genuineness of instruments under private signature depends on proof; and in all cases where they are established by legal evidence, instruments signed by the party making his *ordinary mark*, when he is incapable of writing his name, ought to be held as written evidence of what they contain.....*Tagiasco et al.* vs. *Molinari's Heirs*, 512

4. The force and effect to be given to instruments which have for signatures only the *ordinary mark* of the party, depend more upon rules of evidence than the *dicta* of law, relating to the validity of contracts required to be made in writing..... *ib.*

5. According to the rules of evidence as adopted in this state, the ordinary mark of a party to a written contract, places the proof of it on a footing with all private instruments in writing..... *ib.*

6. The general rule is, that proof of the signatures of the witnesses to an instrument of writing under private signature, when they are dead, does not establish that of the obligor, or principal..... *ib.*

7. Proof of the genuineness of an instrument under private signature, signed by the party making her ordinary mark, or cross, and attested by two witnesses, may be made by parole evidence when the witnesses and party are dead, by proving the witnesses' signatures, and that they were respectable and of good character, who would not attest a forgery..... *ib.*

8. The party who puts the initials of his name, gives a kind of approbation to the instrument on which he writes them, and is binding on him. This is not materially different from an ordinary mark..... *ib.*

9. If a party deny his signature to an act, or private instrument of writing, or alleges it is counterfeited, it must be proved by witnesses who have seen him sign the act, or know his signature from having frequently seen him write. Proof by experts, or comparison of handwriting, may also be received.....*Plicque and Lebeau* vs. *Labranche et al.* 559

10. Proof by witnesses of the acknowledgment of a signature by the party sought to be charged, is inadmissible, when he expressly denies or alleges it is counterfeited..... *ib.*

PAGE.

11. The place at which an act was passed is not essential; and the party may well show, by the testimony of a witness, that the instrument was in fact executed at a different place than that stated in it, in order to rebut the presumption of forgery or perjury, arising from the circumstances of the case.....*Keys and Wife* vs. *Powell et al.* 572

APPEAL.

1. After a suspensive appeal has been allowed, the court below is divested of all jurisdiction in the case.....*Longbottom's Ex'rs.* vs. *Babcock et al.* 44

2. Defects in judicial proceedings, such as want of appearance, judgment by default, or misconduct and neglect of the curator *ad hoc*, &c., can only be remedied by an appeal, and not by an action of nullity.

Seymour vs. *Cooley*, 72

3. An appeal does not lie, to an order allowing an opposition to be filed, when the final action of the court may render the appeal unnecessary.

Garcia & Buyo vs. *Their Creditors*, 93

4. When all the documents mentioned in the certificate of the clerk to the record, are not produced in the Supreme Court, the appeal will be dismissed.....*M'Millan* vs. *Gibson et al.* 118

5. An appeal from an order sustaining the opposition of the attorney of absent creditors, will be dismissed as a case not appealable.

Riker vs. *His Creditors*, 160

6. Where the appellants prayed the affirmance of the judgment appealed from, and the adverse party not appearing to dismiss the appeal, the judgment was affirmed at the costs of the party appealing.

Freret et al. vs. *Marigny*, 414

7. The appellant is bound to cite in the appeal, all the parties before whom, contradictorily in the inferior court the judgment was obtained, which is appealed from.....*Guerin et al.* vs. *Bagneries*, 471

8. So the plaintiff who appeals is bound to cite both the defendant and his warrantor, before the appeal can be heard. Further time will be allowed to cite in all the parties..... *ib.*

9. The Supreme Court will not on a rule to show cause, examine the order of an inferior judge refusing to grant a *mandamus* as prayed for. The only ligitimate mode of revising the orders or judgments of inferior courts is by appeal.....*Bayon* vs. *Mayor et al.* 578

ATTACHMENT.

1. Money due to the plaintiff is a proper object of attachment by any of his creditors; even the defendant who owes it, may attach the amount of

PAGE.

a judgment and execution against himself, in a suit which he may institute against the plaintiff for a sum equal or greater in amount.

Richardson vs. *Gurney*, 285

2. Where money owing by the defendant in execution is deposited in the sheriff's hands, and attached by the former in a new suit against the plaintiff, it will not be considered as money made on the execution, but only pledged for the sheriff's indemnification..... ... *ib.*

ATTORNEY.

1. An attorney in fact who sues in his principal's name, to recover a debt due and owing to him, is a competent witness to prove the plaintiff's demand..... .....*Zino* vs. *Verdelle*, 51

2. An attorney in fact of the heirs of a deceased brother, who is empowered to *compound matters* concerning the succession, has authority to compromise with a co-heir for his share by assuming payment on the part of the other heirs, of a note held by this co-heir against the succession, after it is barred by prescription.....*Lewis* vs. *Lewis's Heirs*, 101

ATTORNEY FOR ABSENT HEIRS, &c.

1. The fee or allowance to the attorney of absent heirs, and the attorney of the curator of an estate, should be graduated by the value of the services rendered.....*Stein* vs. *Bowman, Curator, &c.* 281

2. The counsel fees for settling an estate, cannot be charged to the portion in which the deceased had only a usufruct.

Millaudon vs. *Cayus, Executor, &c.* 306

BAIL.

1. If the principal in a bail bond dies before judgment is rendered against the surety, so as to put it out of the power of the latter to surrender him in execution, the bail will be discharged.....*Wakefield* vs. *M'Kinnell*, 449

BANK CHARTER.

1. Where stockholders have subscribed and complied with all the requirements of the charter, they are thereby entitled to all the rights of stockholders, which cannot be divested by amendatory acts of the legislature, accepted only by the president and directors of the institution.

Boisdére and Goulé vs, *Citizens' Bank*, 506

2. The acceptance of an amended charter by the president and directors, which excludes a class of stockholders, who are colored persons, when the original charter gives no authority to the board to obtain such a modification, does not operate a forfeiture of their stock, or divest them of their rights as stockholders..... .... *ib.*

PAGE.

BILLS AND NOTES.

1. In an action by the acceptor of a bill against the drawer, who directed it to be charged to account of the steamer Walter Scott: *Held*, that the agency of the drawer is apparent on the face of the bill, by directing it to be charged to account of the steam-boat, and which negatives the idea that he was to be personally bound.....*Maher et al.* vs. *Overton*, 115

2. A person having a right to draw a bill of exchange, in consequence of engagements between him and the drawee, or in consequence of consignments made to the drawee, or from any other cause, ought to be considered as drawing upon funds in the hands of the drawee, and not as coming within the exception, that the drawer, without funds in the hands of the drawee, is not entitled to notice of non-acceptance and dishonor of his bill.

Bloodgood et al. vs. *Hawthorn*, 124

3. The drawer of a bill, when sued by the holder, is entitled to notice of its non-acceptance and dishonor; or by averments in the pleadings, and notice at the trial, of the intention of his adversary to hold him liable, on the ground that he drew without authority, and without funds in the hands of the drawee, notwithstanding the want of notice..... *ib.*

4. When the parties to a note secured by a mortgage, have not been put in default by a demand and protest for non-payment, and there is no stipulation that the party failing to comply with the agreement, shall be deemed to be in default by the mere act of failure, under the article 1905 of the Louisiana Code, interest cannot be demanded.

Consolidated Association Bank vs. *Foucher et al.*, 476

5. Where the defendant is indebted to a commercial house, and executed two notes in liquidation of his account, which were passed to his credit, which were negotiated and returned protested, and taken up by the firm to whom he gave them, they are not thereby novated, and may be transferred to *bonâ fide* holders, as evidence of an existing debt.

Yard & Blois' Syndic vs. *Srodes*, 479

BOND.

1. Gold and silver only can be legally tendered in payment of debts. So, a twelve months' bond, taken for the price of adjudication of property of a debtor, seized and sold by a creditor, is nothing more than a bond and security with mortgage on the property sold; and which does not discharge the original obligation or judgment.....*Offutt et al.* vs. *Hendsley et al.* 1

CARRIER AND FREIGHTER.

1. As a general rule, the carrier is bound to prove the casualty or *vis major* which occasioned the loss or deterioration of the property which he undertakes to convey and deliver in good condition, according to the bill of lading.....*Shackleford* vs. *Wilcox et al.* 33

PAGE.

2. When damaged goods are delivered, and received by the consignee without objection, particularly where the damage is apparent on simple inspection, a rigid enforcement of the rule requiring the carrier to prove the damage was occasioned by *vis major*, might operate with injustice. There is an apparent compliance on his part with the conditions of the bill of lading, and by receiving the goods, the consignee becomes liable for the freight..... 33

3. A steam-boat is not liable for part of a passenger's baggage, when separated from the rest; or for the contents of a sealed letter or packet, when stolen, which may be delivered to a passenger on board, at any place the boat may happen to stop...*Wilcox & Fearn* vs. *Steam-boat Philadelphia* 80

4. The owner of a sealed letter or packet, is under no obligation to pay for its transportation, when given to a passenger, and the steam-boat is not liable for its safe keeping..... *ib.*

5. Before the bill of lading comes into the hands of the consignee, the shipper may, if he chooses, vary or modify the contract between him and the carrier or freighter, by a written declaration that part of the cargo was not in good order as specified in the bill of lading.

Hall et al. vs. *Ship Chieftain et al.* 318

CITATION.

1. The occasional absence of the appellee from the state, does not dispense with the service of citation at his domicil.....*Cooley* vs. *Seymour*, 274

2. An avidavit, showing that at the time of service of the citation on the counsel for the appellee, the latter *resided* in another state, will make the service good..... *ib.*

COMMUNITY.

1. Where the property of a community is adjudicated to the surviving husband as *common*, through error, it being the wife's exclusive or paraphernal estate, and this sale is ratified by the heirs on having their respective portions set off to them coming from the deceased wife: and although the sale is afterwards annulled, at the suit of one of the heirs, yet purchasers and mortgagees, deriving title from the husband in the meantime to this property, will be protected and their titles secured.

Foutelet et al. vs. *Murrell*, 291

2. A marriage contract entered into in France, where no community of acquests and gains existed by law, and none were stipulated, yet when the parties removed to Louisiana, such a community took place by operation of law, in reference to the property acquired here.....*Tourné* vs. *Tourné*, 453

3. The wife has an action against the heirs of her husband, to recover her share of the property of the community alienated by him in fraud of her

PAGE.

rights; but when she claims this right, in addition to a judgment of separation from bed and board, and fails in the first, she is not entitled *then* to any remedy in relation to the property..... 453

4. The community of acquests and gains is terminated by the death of one of the parties. The survivor has no right to sell the whole property. The heirs of the deceased partner, if they accept the succession, either tacitly or expressly, become joint owners; and if the surviving partner sells he can convey no greater right than he has himself....*German* vs. *Gay et al.* 580

5 Where the surviving partner sells slaves or other immoveable property of the community, his vendee will become co-proprietor with the heirs of the deceased partner..... *ib.*

6. The distinct interest of the parties to the community, attaches at the dissolution of the marriage, subject to the right of the wife or her heirs to renounce and be exonerated from payment of the community debts..... *ib.*

7. The heirs of a deceased partner in the community of acquests and gains having a joint interest, can maintain an action for their interest against a third possessor of a slave alienated by the husband after the dissolution of the community..... *ib.*

8. The husband's authority as head of the community, ceases at the dissolution of the marriage..... *ib.*

9. The District Court has jurisdiction of an action of partition of a community..... *ib.*

COMPENSATION.

1 The defendant cannot set up a claim against the adverse party for unliquidated damages on a contract, in compensation for a liquidated demand.....*Hoffman* vs. *Pontchartrain Rail Road Company*, 20

2. Compensation or payment must be pleaded, to authorise the defendant to offer evidence, showing the plaintiff had received various sums of money, to a greater amount than he sues for.....*Mortimer* vs. *Trappan's Executor*, 108

CONFESSION.

1. The confession of an unhappy parent, who is threatened with a suit, drawn from him by a letter denouncing his son for forgery, and charging him with forging the father's signature to certain notes sold and delivered to the plaintiff, will not bind the party making it.

City Bank of New-Orleans vs. *Foucher*, 405

2. A judgment may be taken by confession of the defendant, without a trial, for the sum admitted to be due and owing, and the cause continued for trial for the part disputed.....*Parsons et al.* vs. *Suares*, 411

3. But judgment by confession can only be taken in favor of the plaintiff, to whom the debt is acknowledged to be due and owing..... *ib.*

PAGE.

CONSTITUTIONAL LAW.

1. A constitutional law, which prohibits or takes away certain privileges and rights previously granted, or limits their exercise, causes *damnum absque injuria;* but if the law is unconstitutional, it can have no effect, and can cause neither damage nor injury.....*M'Guire* vs. *Mead*, 311

2. The act of the territorial legislature, passed 22d April, 1806, requiring courts of justice to stop all proceedings against members of the legislature, in actual attendance on legislative duty, and claiming their privilege, is not repealed or superseded by the adoption of the constitution of Louisiana.
Bradshaw et al. vs. *Dickson*, 485

3. If an act amendatory of the original charter of a bank, involves the destruction of a vested right, or impairs an obligation, it will be declared unconstitutional and void.....*Boisderé & Goulé* vs. *Citizens' Bank*, 506

CONTINUANCE.

1. A continuance should be granted on an affidavit, to obtain the testimony of a subscribing witness, to show that the bill of sale under which the party claims, was witnessed by him, and executed at a different place from that stated in the body of it.....*Keys and Wife* vs. *Powell et al.* 572

CONTRACT.

1. There is a privity of contract between the surety of a debtor and the creditor, which compels the latter to preserve his rights against the debtor for the benefit of the former.....*Offutt et al.* vs. *Hendsley et al.* 1

2. There is no privity of contract between the vendee of a mortgage and the creditor of the original mortgagor..... *ib.*

3. An assumpsit by a deceased vendor to refund the price of a slave which died of a redhibitory disease, is binding on his heir.
Noirette, f. w. c. vs. *Diggs's heirs*, 172

4. There is no law requiring a party claiming damages for an injury resulting from the non-performance, or unskilful performance of a contract for work and labor *to be* done, to first put the party delinquent *in morâ*, before he can prove his damages.....*Morton* vs. *Pollard*, 174

5. Where a workman makes a piece of machinery to order, and it is alleged by the employer that it was unsuitable for the purpose intended, without objection that it was unskilfully made, the former will be entitled to recover the *price* of his work on the contract.....*Leeds* vs. *Zeringue*, 201

6. A promise by a party to indemnify and save harmless a person who, at his request, sleeps in and guards his store at night, *is binding*, and will authorise a jury to give damages sufficient to pay the expenses of a criminal

PAGE.
prosecution incurred by this person, in consequence of acceding to such promise.....*Dezier* vs. *Bougnon*, 250

CORPORATION.

A corporation can maintain a petitory action to remove nuisances and clear the harbors and banks of rivers, by showing that the land, or place occupied, is a public place, destined to public use. *Gleisse & Holland* vs. *Winter*, 149

2. The fact of a rail-road company having possessed themselves of a strip of land through the land of the defendants, and constructed a road through it, does not preclude them from instituting suit afterwards, and having the land adjudged to them, on assessment and payment of the damages sustained by the owners, according to the provisions of the act of incorporation.....*Carrollton Rail-Road Company* vs. *Avart et al.* 205

3. Where the president and directors of a company are appointed commissioners to perform a certain trust, they act in the latter capacity, and are responsible for their acts *as commissioners*, and their capacity as such exists *after* their offices of president and directors may have expired.
Lallande vs. *President and Directors of Louisiana State Insurance Co.* 326

4. Where commissioners are appointed to open subscription books for the stock of a company on a certain day, and keep them open until the stock is taken, the time during which they are to keep the books open is unlimited; and the commissioners are responsible for their acts until the subscription is filled..... *ib.*

5. Corporations are intellectual beings, distinct from the persons who compose them, and are creatures of the law. They can act only according to their organization, in the form or manner pointed out by their charters, and the laws of the land.....*Peirce et al.* vs. *New-Orleans Building Co.*, 397

6. The estates and rights of a corporation belong to the whole body, and none of the individuals who compose it can dispose of any part of them. The act of the majority of the corporators, legally expressed, is the act of the whole; and no contract is legally binding on the corporation, which is not binding on every member of it..... *ib.*

7. But the will or assent of a majority of the stockholders, taken separately, and not in full meeting, is not regarded in law as the will of the corporation itself..... *ib.*

8. So where the assent of a majority of the stockholders of a building company was expressed in relation to a certain transaction concerning the corporation, not in a meeting of stockholders, but by each one separately, and at different times, and evidenced, not by the minutes of the corporate proceedings, but by a separate paper in the possession of a committee: *Held*, that the proceeding was null and void, as containing no legal evidence

PAGE.

of the consent of the corporation either according to its charter, or the general principles of law..... 397

CORPORATION OF NEW-ORLEANS.

1. Where property is seized for the violation of a city ordinance, although the seizure was lawful in its commencement, yet if the city authorities fail to pursue the requisites of the law, in advertising and disposing of the thing seized, the act of the officer making the seizure, will be considered as a trespass *ab initio*, for which his constituents are responsible.

Baumgard vs. *Mayor et al.* 119

2. The case of the corporation receiving runaway and offending slaves in the city jail, and working them in the chain-gang on the streets, is in the nature of a bailment in which the bailor is alone benefited; and the corporation is only bound to use ordinary vigilance in keeping them.

Chase vs. *Mayor et al.* 343

3. Where the corporation of New-Orleans received a runaway slave, and put him to work in the chain-gang, on the public streets, and he made his escape from the guards, and it was in proof that the owner's agent was notified of it the next day, and no neglect or want of the ordinary vigilance appearing: *Held*, that the corporation was not liable..... *ib.*

4. Licenses granted to a person by the mayor of the city of New-Orleans, in pursuance of certain city ordinances, to sell fruit at stands or stalls on the levee, confer only personal privileges which cease at the death of the grantee, although the period for which the license is given has not expired.

Brunetti vs. *Mayor et al.*, 430

CURATOR.

1. The oath of the son, as the agent of the plaintiff, is sufficient to obtain an order of court appointing a curator *ad hoc* to the defendant, in a case where suit is pending.....*Seymour* vs. *Cooley*, 72

2. A curator *ad hoc* is to be appointed to an absentee, in a suit which is instituted and pending. The citation in such a case must be served on the curator *ad hoc*, against whom contradictorily the proceedings must be carried on to final judgment..... *ib.*

3. The 57th article of the Louisiana Code, expressly requires that a suit be first instituted and pending, before the appointment of a curator *ad hoc* is to be made..... *ib.*

4. The general provisions in the Code of Practice, for the appointment of curators by the Probate Court, do not repeal the particular one requiring all courts to protect the interests of absentees in suits pending before them, by the appointment of a curator *ad hoc*..... *ib.*

PAGE.

5. A curator *ad hoc*, appointed by the court to an absentee, may employ counsel to defend the interests of such absentee, who is entitled to a just compensation for his services, to be paid by the absentee, whose interests he defended.....*Cooley* vs. *Beauvais*, 85

6. But a curator *ad hoc*, has no right to obtain from the court, taking cognizance of the original action, a summary and *ex parte* order on the absentee, fixing the compensation for his services, to be taxed as part of the costs. The court cannot grant such order, without hearing the party concerned..... ..... *ib.*

7. When a curator *ad hoc* is a sworn attorney of the court, he will be presumed to have done his duty, when the contrary does not appear.

Cooley vs. *Seymour*, 274

8. The curator *ad hoc* is responsible for his neglect to the party whose interests he is appointed to defend, and his faults or misconduct are not to be visited on the adverse party..... ..... *ib.*

DAMAGES.

1. In a case of wanton and illegal arrest of plaintiff's horse and dray, and detention of them, without cause by the defendant, it will be considered as evincing such obstinate determination to take justice into his own hands, as will authorise a jury to inflict damages in the shape of smart money.

Summers vs. *Baumgard*, 161

2. Ten per cent. damages will not be awarded in an appeal case, which in its origin is one of litigation and uncertainty.

Noirette, f. w. c. vs. *Diggs's Heirs*, 172

3. Where a party is sued for loss and injury done to goods by his slave, the measure of damages should be the difference between the value of the goods before, and that after the injury done to them. He cannot be made liable for the profit, the plaintiff (who was a tailor) might have made on them by his industry in making them into clothes....*Guerrier* vs. *Lambeth*, 339

DEPOSIT.

1. The depositor, to be entitled to his right of privilege, must make proof of the identity of the thing deposited; for it is of the essence of deposit that the depositary should be bound to keep the thing deposited, and restore it in kind to the depositor.....*Longbottom's Executor* vs. *Babcock et al.* 44

2. A sum of money found in the store of a deceased agent, making part of a sum put into his hands to be disbursed on account of his principal, does not entitle the owner to a privilege on the succession of the deceased, as in case of a special deposit, when there is no evidence to show that this sum is the *same money* received by the deceased agent..... *ib.*

PAGE.

3. A packet or sealed letter with bank notes enclosed, delivered by a passenger to the clerk of a steam-boat, for safe keeping, is simply a contract of deposit between *them*, in which the depositary is only bound to use ordinary care.....*Wilcox & Fearn* vs. *Steam-Boat Philadelphia*, 80

DELEGATION.

1. Delegation includes a novation by the extinction of the debt due from the person delegating, and the obligation contracted by the new debtor to the common creditor.....*Bonilla, syndic, &c.* vs. *Merle et al.*, 216

2. Delegation contains a double novation where the person delegated is the debtor of the person delegating: the former, to acquit himself of his obligation to the latter, contracts a new obligation to the creditor. Novation takes place, both of the obligation of the person delegating, by giving a new debtor, and of the person delegated, by the new obligation he contracts with the common creditor..... *ib.*

3. If the person delegated be not debtor of him delegating, still if he obligates himself to pay, he is bound, and cannot resist payment, only saving his recourse against the person delegating him..... *ib.*

4. So, where A requested B, his factor, to pay C one thousand nine hundred and eleven dollars, who replies he will *when put in funds*, and advises A he has promised C, the common creditor, to do so; but the latter not getting his money as soon as expected, applied several times to A, his original debtor, to remit him the money, and does no act in the meantime to release B from his conditional promise to pay him: *Held*, that it was a delegation of a new debtor from A to C, and B became absolutely bound on getting in funds..... *ib.*

5. The creditor, by the promise of the person delegated, has two bound, to either of whom he may resort for payment. If the original debtor makes payment after delegating another, he will have his recourse against the latter; but until payment, his right against the delegated debtor to the creditor, is suspended..... *ib.*

6. When B, the defendant, was put in funds, he became absolutely bound to C; he might have again become so to A, if it was shown the latter had paid C..... *ib.*

DISCONTINUANCE.

1. Neither party to a suit is at liberty to dismiss or discontinue his action which is not exclusively his own, and avert a judgment which his opponent has a right to obtain.....*M'Donough* vs. *Copland*, 308

2. So where a party publishes a monition, under the act of 1834, for the assurance of titles acquired at judicial sales, and an opposition is filed to the homologation of the sale, the plaintiff in the monition cannot discontinue or dismiss his suit..... *ib.*

PAGE.

DIVORCE.

1. The wife can obtain a divorce *a vinculo matrimonii* from her husband when it is in proof that he has lived in open adultery with another woman, and there is no evidence at the institution of suit, that a reconciliation has taken place.....*Adams* vs. *Hurst*, 243

2. The statute of 1827, relative to divorces, authorises a divorce on the part of the wife, when the husband keeps a concubine in the common dwelling, or keeps her publicly in any other house. It is also held, that living with her at *her own house*, is within the meaning of the law..... *ib.*

DOMICIL.

1. An exception to the general rule, that defendants have a right to be sued in the parish where they have their residence and domicil, has been made by the court, in cases necessarily growing out of the provisions of law, in relation to joint obligors who are absolutely required to be sued together .....*Millaudon* vs. *Turgeau et al.* 547

2. The necessity of the case does not require that obligors *in solido* should be sued together. To create a new exception in favor of such contracts, would be a violation of positive law..... *ib.*

3. Defendants sued as endorsers, and bound *in solido* each for the whole sum, have a right to be sued at their respective domicils, and separately when they reside in different parishes. The court cannot create an exception in such cases, which is done when the obligation is joint only..... *ib.*

ENDORSER.

1. Where the notice of protest is left with a black man, who appears to be a servant in the house of the endorser, and who stated at the time that the latter was still in bed, it is insufficient to bind the endorser.

Dufour vs. *Morse et al*, 333

2. The fact of the endorser taking a mortgage from the maker of a note, to indemnify him against loss, does not dispense with due and legal notice of protest for its non-payment to be given by the holder of the note..... *ib.*

ERROR.

1. Errors assigned as apparent on the face of the record, that interest was allowed on an unliquidated claim ; that the land was ordered to be seized and sold, to pay the value of the improvements allowed to the party evicted ; and finally, that compensation was made to the curator *ad hoc*, all in the same judgment, are well taken.....*Cooley* vs. *Seymour*, 274

2. The appellant cannot assign for error apparent on the face of the record, that the judgment was signed before the expiration of three judicial days from its rendition.....*Minor et al.* vs. *Lanbelle*, 323

PAGE.

EVICTION.

1. The provision of the Civil Code, 354, article 57, which gives to the buyer, in case of eviction, the increased value of the property between the time of sale and the period of eviction, which is to be restored by his vendor in warranty, is suppressed and repealed by the adoption of the Louisiana Code.....*Morris* vs. *Abat et al.*, 552

2. In case of eviction of the buyer, the seller is only responsible for the restitution of the *price;* the fruits or revenues, when the vendee has to return them to the true owner, and the costs of suit and damages, when the vendee has suffered any over and above the price he has paid..... *ib.*

3. The marshal or sheriff is responsible in damages to the purchaser who is evicted for selling a slave, or other property, without sufficient authority. These officers warrant the correctness and legality of their own acts, and if by their illegal acts they cause damages, they are bound to make reparation. *ib.*

EVIDENCE.

1. Evidence will not be received to show that a previous mortgage on certain property has been paid off, when there is no allegation of payment in the petition; nor to establish fraud against the other creditors, in executing the mortgage by the debtor, when the action of rescission is prescribed by the lapse of one year.....*Dixon* vs. *Emerson*, 104

2. In an action to annul a mortgage made in fraud of creditors, when the pleadings admit the existence of the act importing the mortgage, it is unnecessary to offer it in evidence. The only question for the jury is, was it made in fraud of creditors?..... *ib.*

3. In an action on a special agreement for the price of putting up a mill, evidence of the value of the work and labor done on it will not be admitted, the parties having agreed on the price.....*Morton* vs. *Pollard*, 174

4. Where the consideration of a mortgage is impeached by the third possessor of the mortgaged premises, *primâ facie* evidence of the genuineness inherent in and resulting from the contract of mortgage itself, coupled with proof of advances of money, &c. to the mortgagor by the original mortgagee, will authorise the latter to recover against such third possessor on his mortgage.....*Deverges* vs. *Lanusse*, 177

5. An erased credit on a note in the possession of the creditor, is not conclusive proof, but may be repelled by evidence to show that the credit was erroneously endorsed in the first instance.

Garnier et al. vs. *Peychaud's Executor*, 182

6. A note with the signature of the debtor erased or crossed, is still admissible in evidence on the part of the creditor to show he has paid it for the former, and is entitled to be refunded out of his estate. The erasure

PAGE.

furnishes a presumption in favor of the debtor, but it is not a presumption *juris et de jure*. It may be entirely repelled by showing that the signature was erased through error or inadvertency..... *ib.*

7. But a note to which the deceased was no party is *per se* inadmissible in evidence to charge his estate with its amount. Evidence, however, to show that the proceeds of it, when discounted, went into his hands, is admissible..... *ib.*

8. The order or decree of a court in another state appointing guardians to minors, for the special purpose of protecting their rights and interests in a certain suit pending in Louisiana, will not be received as evidence of a general authority to sue for and recover the property of a succession due to the minors here, and compel the administration to account.

Douglas and Wife, vs. *Edwards and Wife*, 234

9. But if the powers granted to guardians of minors by the decree of a court in another state, confers full authority on them in legal form to represent the minors in all things relating to their property here, such decree would be full evidence of authority in the guardian to act..... *ib.*

10. The record and judgment of a suit against the plaintiff by a mortgage creditor, under which a tract of land sold by the former to the defendant, was seized and sold, is admissible in evidence in an action for the price, under the plea of *eviction*.....*Landry* vs. *Gamet*, 246

11. Parole evidence is admissible to prove filiation and heirship generally; but when it isshown that there exists record, or written evidence, or its existence is rendered highly probable, it ought to be produced, especially, where several persons, strangers to each other, claim the succession.

Stein vs. *Stein's curator*, 277

12. The certificate of the American consul residing in a foreign country, attesting the official character of an officer of that country, before whom the depositions of witnesses are taken, is insufficient to make them legal evidence..... *ib.*

13. It is not the duty of an American consul to attest the signatures of public functionaries in the countries where they reside; and in order to give their certificates the form of testimony, it will be necessary to show that this is one of their consular functions..... *ib.*

14. In a petitory action, a judgment of eviction of the vendor of the plaintiff, obtained before he sold the land, by the defendant, when the former was his tenant, and attempted to hold the land in dispute in his own right, will not be received in evidence, or considered as *res judicata* in favor of the defendant's right to the land.....*Jones et al.* vs. *Purvis et al.*, 288

15. The general rule is, that written titles form full and conclusive proof between the parties; but where a third person alleges nullity of a sale for some cause, parole evidence is admissible under such allegation.

Macarty vs. *Bond, administrator*, 351

PAGE.

16. The affidavit of the defendant annexed to his answer that his signature on the note in suit is forged and counterfeited, will not be permitted to go to the jury as *evidence*, when not made the basis of some preliminary or interlocutory proceeding.

City Bank of New-Orleans vs. *Foucher*, 405

17. The rules of evidence by which courts of justice in this state have been governed, since the change of government have been borrowed in a great part from the English law, as having a more solid foundation in reason and common sense..... .....*Tagiasco et al.* vs. *Molinari's Heirs*, 512

18. According to the rules of evidence as adopted in this state, the ordinary mark of the party to a written contract, places the evidence of it on a footing with all private instruments in writing..... *ib.*

19. A certified *copy* from a *copy* of a Spanish record of the judicial proceedings and adjudication of property, ordered to be kept in the archives of the Spanish government at Baton Rouge, is legal and admissible evidence of the matters to which it relates. Only a copy of the judicial proceedings, according to the practice of the Spanish government, was kept in relation to the administration of estates where the property was situated in different jurisdictions.....*Vidal's Heirs* vs. *Duplantier*, 525

20. In an action by the heirs of a surety in a paymaster's bond against a co-surety to compel him to pay his proportion of the sum for which all the sureties were condemned *in solido*, by a judgment of the United States District Court: *Held*, that the record and judgment of said court is domestic, although not examinable in the state courts; and not being revised or reversed by the Supreme Court of the United States, is *res judicata* and conclusive evidence against each and all of the parties, as to all things adjudged by it, and admissible in evidence.....*Rochelle's Heirs* vs. *Bowers*, 528

21. Evidence of the acknowledgment of a party who is sought to be charged, or rendered liable, is the weakest species of evidence; for the witness who testifies cannot be convicted of perjury if he swears falsely; and it is almost impossible to contradict him.

Plicque & La Beau, vs. *Labranche et al.* 559

22. If a party deny his signature to an act or private instrument of writing, or alleges it is counterfeited, it must be proved by witnesses who have seen him sign the act, or know his signature from having frequently seen him write. Proof by experts, or comparison of hand writing, may also be received..... *ib.*

23. Proof by witnesses of the acknowledgment of a signature by the party who is sought to be charged, is inadmissible, when he expressly denies, or alleges it is counterfeited..... *ib.*

24. The article 325 of the Code of Practice modifies and supersedes the provisions in the Louisiana Code, article 2241, which allows proof of signatures by witnesses, as in other cases..... *ib.*

PAGE.

25. Parole evidence is inadmissible to prove the simulation of a sale, and that the property in question was conveyed as a security to indemnify the vendee against certain endorsements, from which he has since been released.

Purdon vs. *Linton's Executor*, 563

26. But parole evidence is admissible to explain an ambiguity arising extraneous of the written instrument, to show that certain property alluded to in a counter-letter was the sole property of the vendor, and must have been that which formed the subject of the sale and conveyance sought to be rescinded..... *ib.*

27. A written instrument which does not of itself, prove a contract of sale of immoveable property, cannot be rendered sufficient by the admission of parole evidence to explain and enlarge its obligations..... *ib.*

28. A letter written by the vendee to the vendor of certain property, rendering it quite clear that the vendee did not intend really to purchase the property, but merely to hold it as a nominal purchase to secure him against certain endorsments for the vendor, will be received as evidence of the true understanding of the parties..... *ib.*

29. Parole evidence is admissible to prove that a written instrument was executed in a different place from that at which it purports to have been passed.....*Keys and Wife* vs. *Powell et al*, 572

30. The place at which an act was signed, is not essential, and the party may well show by the testimony of a witness, that the instrument was in fact executed at a different place, in order to rebut the presumption of forgery or perjury arising from other circumstances in the case..... *ib.*

31. The record and judgment of a suit by another party against the defendants, condemning them to pay damages occasioned by the plaintiff's conduct whilst in their employment, is admissible in evidence to prove *rem ipsam*, *i. e.*, that the money was recovered.

Davis vs. *Louisiana Tow-Boat Company*, 575

EXECUTOR AND ADMINISTRATOR.

1. The article 1004 of the Code of Practice, requires that opposition should be made within *three days* to an executor's account after filing it; but it does not prevent opposition from being made afterwards, if made before judgment of homologation.

Longbottom's Executors vs. *Babcock et al.* 44

2. Executors are legally incapable of purchasing the property of successions administered by them, at a sale provoked by themselves; and cannot gain at the expense of the estate they administer..... *ib.*

3. Executors are responsible for all the debts in the inventory not accounted for. They are bound to collect and account for all sums due to the estate, or show due diligence to collect, and failure..... *ib.*

PAGE.

4. Opposition to an administrator or executor's account, may be presented and filed after the lapse of three judicial days from its rendition, and at any time before steps are taken to have it homologated by the court.

Chiasson's Heirs vs. *Dupuy et al.* 57

5. To compel an administrator to account, all the parties must be properly before the court; the heirs of the deceased partner properly represented, as well as the surviving partner of the community.

Douglass and Wife vs. *Edwards and Wife*, 235

6. An executor or administrator ought not to be compelled to render two separate accounts, relating to a single succession..... *ib.*

7. Until an heir is recognised and admitted as such, he has no right of action against the curator or administrator of the estate of the deceased to compel an account, and is not entitled to notice of the proceedings in relation to the administration. In the meantime, the attorney for absent heirs can call on the administrator to render an account.

Stein vs. *Bowman, Curator*, 281

8. A provisional account and prolongation of the administrator's term is not conclusive on the heirs at law, who may afterwards appear and be recognised. The judge is to receive and approve such account on his official responsibility, contradictorily with the attorney for absent heirs..... *ib.*

9. Where the executor charges full commissions on the appraised value of the inventory of all the common property belonging to the husband and wife and he afterwards is appointed her executor, he cannot charge commission on the value of certain slaves bequeathed by the husband to legatees, of which his testatrix retained the usufruct during her life.

Millaudon vs. *Cajus, Executor*, 306

10. The administrator is without capacity to purchase property at the sale of a succession administered by himself; and it is equally clear he cannot do so by means of an agent, or person interposed for that purpose.

Macarty vs. *Bond's Administrator*, 351

11. An opposing creditor may attack a sale of property of an estate as being illegally made to the administrator, without alleging fraud and injury to himself, when the evidence shows that in fact no contract of sale exists, under such circumstances, for want of proper parties capable of contracting. *ib.*

12. Where the executor refused to pay over the funds of the estate to the heirs, on a rule requiring him to do so, but appealed, he was mulcted into five per cent damages on the amount of funds in his hands for the delay.

Guesno's Heirs vs. *Cucullu, Executor*, 415

FRAUD AND SIMULATION.

1. In an action by the syndic of creditors to annul certain sales made by the absconding debtor, on the ground of fraud, it is not sufficient that the

PAGE.

insolvent debtor, and a person acting as the common friend of both parties, were guilty of fraud and simulation, to enable the plaintiffs to succeed, if it appears the purchaser acted fairly and honestly.

M'Manus's Syndic vs. *Jewett*, 170

2. Fraudulent and dishonest acts done by the vendor of the plaintiff, against the rights of the defendants, cannot affect them, unless it be shown that they were *particeps fraudis* by combining and colluding with the defrauder..... .....*Jones et al.* vs. *Purvis et al.* 288

3. Where a purchaser is in possession under a conveyance, the question of fraud cannot be inquired into collaterally, in a case commencing with a seizure; the party complaining must bring a direct and revocatory action.

Weeks vs. *Flower et al.* 379

4. Where a plaintiff in injunction sues for vindictive damages, alleging his possession of the property seized and enjoined, the defendant may repel the action by showing that the contract of sale under which the plaintiff claims and bases his right, is a *simulation*, and intended to cover the property from the defendant's claim against the true owner... ..... *ib.*

5. A fraudulent purchaser who obtains property by fraudulent representation, acquires only a naked possession, which gives no right to any of his creditors to attach in his hands...*Parmele et al.* vs. *M'Laughlin*, 436

6. A purchaser of goods obtained by the seller through fraudulent representations, who buys with full notice of such fraud, acquires no right or property in them; they are liable to the claim of the true owner in his hands..... ..... *ib.*

FREIGHT.

1. When damaged goods are delivered and received by the consignee, without objection, particularly where the damage is apparent upon simple inspection, a rigid enforcement of the rule requiring the carrier to prove the damage was occasioned by *vis major*, might operate with injustice. There is an apparent compliance on his part with the conditions of the bill of lading; and by receiving the goods, the consignee becomes liable for the freight.....*Shackleford* vs. *Wilcox et al.* 33

2. The owner or master of a vessel is not liable for damages done to deck freight arising from the dangers and waves of the sea, and the necessary exposure of the property on deck, stowed there with the consent of the owner..... *ib.*

HEIRS.

1. The mortgage acquired by a third person to dotal or paraphernal property of the deceased wife, after it is even illegally adjudicated by the Probate Court to the surviving husband, will bind her heirs, if executed before any act is done by them to annul the sale.

Foutelet et al. vs. *Murrell*, 299

PAGE.

2. The heirs have the right at any time to claim and take the seizin, and possession of the estate from the testamentary executor, on offering him a sufficient sum to pay the moveable legacies.

Guesno's Heirs vs. *Cucullu, Executor, &c.* 415

3. The heirs succeed to all the rights of the ancestor, and among other rights devolving upon them is that of suing and compelling a compliance with the intentions of the ancestor, as expressed in his last will and testament.....*Poydras* vs. *Taylor*, 488

4. So where the testator provided in his will, that his slaves should be sold with and attached to his plantations on which they were found at his death, and the purchaser under the conditions of the will, was about to alienate them separately: *Held*, that the heir can maintain an action in behalf of the slaves, to prevent their sale, in violation of the conditions of the will, and compel a compliance with the *intentions* of the testator as expressed therein..... *ib.*

5. The heir who succeeds to the rights of his ancestor may, after the executors are discharged, enforce the provisions of the ancestor's will, and see that his intentions are carried into effect against purchasers; although the heir has no other interest in the matter.....*Poydras* vs. *Mourain*, 492

6. So where the testator provided in his will, that his slaves should be sold as attached to the plantations on which they were situated at his death, and the purchasers were required to conform to this condition: *Held*, that the heir can maintain an action to prevent the purchaser from selling the slaves, contrary to the provisions of the will..... *ib.*

7. The heirs of a deceased partner in the community of acquests and gains, having a joint interest, can maintain an action for their interest against the third possessor of a slave, alienated by the husband after the dissolution of the community.....*German* vs. *Gay et al.* 580

HUSBAND AND WIFE.

1. According to the provisions of the Spanish law, (Partida 4, 11, 1 and 17,) the wife has a tacit mortgage on the property of her husband, for the restitution of both her dotal and paraphernal effects.

Gasquet et al. vs. *Dimitry*, 585

2. The part of the legislative act of 1813, which requires marriage contracts to be recorded, in order to have effect as a mortgage against third persons, on the property of her husband, for the restitution of the wife's dotal and paraphernal effects was repealed by the Louisiana Code, in 1825. *ib.*

3. Where the wife signs an act of mortgage with her husband, given to secure a debt for his benefit, in which she renounces, formally, all her rights, privileges and mortgages on the property, ceding and transferring them to her husband's creditor: *Held*, that this is a contract entered into

PAGE.

by the wife conjointly with her husband, *binding* herself for his debts, which is expressly prohibited by the Louisiana Code, article 2412; and such renunciation on her part is null and void.....*Gasquet et al.* vs. *Dimitry*, 585

4. The wife cannot validly bind herself for her husband, or for his debts, even with his consent; for this would place her rights entirely under his control. ..... *ib.*

5. Where the wife renounces her right of mortgage in favor of her husband's creditor, as a security for his debt, she thereby becomes his surety, and does indirectly that which she is positively forbidden by law to do directly.....*Gasquet et al.* vs. *Dimitry*, 592

6. The wife may sell or enter into a contract of mortgage in relation to her dotal or paraphernal effects and rights, with her husband's consent; but such contracts must be for her benefit, or that of her and her husband..... *ib.*

7. It is not of the essence of suretyship that the obligations of the principal and surety should be co-extensive. If the wife renounces her right of mortgage, and cede it in favor of her husband's creditor, she becomes surety for a debt of his contracting, so far as her interest in the mortgaged property is concerned..... *ib.*

8. The *Senatus Consultum Villeianum* of the Roman law, is the fountain of our legislation, in relation to the rights of married women. As relates to mortgages and sales, the *Senatus Consultum* gave the wife who had pledged her own property to her husband's creditor, the right to recover it back, even after it had been sold..... *ib.*

INJUNCTION.

1. The act of 1833, relative to injunctions, disallows the principle established by the Supreme Court, (5 Louisiana Reports, 87,) "that a privity must exist between the party enjoining and the judgment enjoined," to entitle the party to damages.....*Offutt et al.* vs. *Hendsley et al.*, 1

2. To entitle a party to an increase of damages, for the wrongful suing out an injunction, suit must be instituted on the bond..... *ib.*

3. Where certain moneys arising on the balance of a judgment are ordered to be paid into court, and before it is deposited execution issues for the whole amount of the judgment, an injunction will be sustained for so much of said moneys as are shown to have been paid, and for such further sum as the defendants in the judgment will be entitled to receive in their own right, and dissolved for the remainder.....*Millaudon et al.* vs. *Percy et al.*, 441

INSOLVENCY.

1. Where an order of arrest issues on the affidavit of a single creditor, imprisoning the insolvent and sequestering his property, the act enures to the benefit of all the creditors.....*Ratti & Pipon* vs. *Their Creditors*, 22

PAGE.

2. The sequestration, when once made is irrevocable, except on payment of the debts of all the creditors.....*Ratti & Pipon* vs. *Their Creditors*, 22

3. The person of the insolvent may be discharged from imprisonment, on giving security; but the penalty of the bond should be large enough to cover all the debts, and to indemnify all the creditors in case of its breach. *ib.*

4. The condition of the bond is, that the insolvent shall remain within the jurisdiction of the court, until definitive judgment of homologation is pronounced; any partial homologation of the proceedings will be disregarded. *ib.*

5. According to the provisions of the insolvent law of 1808, relative to debtors in actual custody, the creditors have a right to confront their debtor in open court, or before the judge at chambers, and if such opportunity has not been afforded them, in consequence of the non-appearance of the debtor, the court *cannot grant him a discharge*.....*Bott* vs. *His Creditors*, 40

6. Where a stay of proceedings is ordered, and a day fixed for the meeting of creditors, if the debtor fails to appear or show cause by counsel for his non-appearance, and obtain a continuance, all the proceedings are at an end under the first order of court..... *ib.*

7. The retention by a syndic of any part of the property surrendered, without selling enough to pay the debts of the insolvent, is improper; and he is accountable for its value to the creditors.....*Patin* vs. *Her Creditors*, 64

8. The creditor who demands the arrest of his insolvent debtor, must set forth the circumstances which induce him to make the oath; but it is sufficient if these circumstances are disclosed by reference to the petition, schedule or other documents in the case. A detail of them is not required in the affidavit.....*Passebon* vs. *His Creditors*, 189

9. The article 223 of the Code of Practice, requires the creditor to swear he *verily believes* the facts in his affidavit; but these words are not sacramental. The affiant may swear, *he suspects and fears* his debtor is about to depart, &c., and it will be deemed sufficient..... *ib.*

10. In cases of opposition to the appointment of syndics, the question is not whether the proceedings before the notary shall be homologated, which does not require a judgment of the court, but whether the opposition shall be sustained on the ground that the syndics were not elected by a majority of legal votes.....*Pandelly* vs. *His Creditors*, 387

11. The proceedings of creditors before a notary in appointing syndics, are not vitiated because some illegal votes are given. These are to be struck out from the proceedings..... *ib.*

12. The creditor may prove his claim and vote for syndics by proxy or agent, who can swear to the fact of the debt being due and owing, of his own knowledge..... *ib.*

13. Any evidence which satisfies the notary of the authority of an agent to vote for syndics, is *primâ facie* good, and when no objection is made, he

PAGE.

cannot refuse the vote; but the notary does not decide on the reality of the debts, and if he did, it would not conclude the other creditors.

Pandelly vs. *His Creditors*, 387

14. Creditors not making opposition to votes for syndics before the notary, may do so within ten days after the proceedings are returned into court; but then the burden of proof is on the opposing creditor, to show the illegal votes ..... *ib.*

15. The principle, that claims of creditors on which they vote, may be investigated previously to the homologation of the appointment of syndics, is confined to cases of forced surrender, according to the Spanish law. The statute of 1817, relating to voluntary surrenders, requires only *ex parte* evidence of the debts, previous to voting for syndics..... *ib.*

16. The *majority in amount*, required to elect a syndic when there are more than two candidates, is not an absolute majority of all the votes given, but only a plurality or the highest number..... ..... *ib.*

17. It is only on an opposition to the tableau of distribution, that the validity and relative rank of debts is to be finally and contradictorily tried between all the creditors..... ..... *ib.*

INSURANCE.

1. Where a policy of insurance against fire covers fifteen thousand dollars of the property insured, and a second policy is taken out of another office on the same property as a valued one, which is endorsed on the first policy, it cannot have the effect of putting the first office *in duriori casu*, or to convert its policy from an open to a valued one.

Millaudon vs. *Western Marine and Fire Insurance Co.* 27

2. If a subsequent policy contain no provision in respect to prior insurances, the amount of insurable interest in it will be the same as for the first policy; for the insured may insure again and again the same property, but can recover but one indemnity, and this he may recover of the first or subsequent underwriters. Those who pay the loss, may demand a proportionable contribution from the other underwriters, who are in this respect sureties for each other ..... *ib.*

3. Insurance on merchandise, furniture or buildings against fire, is governed by the same rules as to valuation, as a ship or cargo. If the policy is open in its form, the value of the interest must be proved ..... *ib.*

4. The amount of interest insured in a subsequent policy, will depend on the amount insured in previous policies. A cargo valued at twelve thousand dollars, and in a second policy was insured at twenty-seven thousand five hundred dollars; there remained an insurable interest of fifteen thousand five hundred dollars, embraced by the second insurance ..... *ib.*

5. An error in stating the time when a vessel sailed, so as to place her *out of time*, when the insurance was effected, will be considered a misrepre-

PAGE.

sentation and concealment of the true time, whether made erroneously or intentionally, sufficient to avoid the policy and release the insurers.

Currell et al. vs. *Mississippi Marine and Fire Insurance Co.* 163

6. A knowledge of the true date at which a ship sails, is all-important to the insurers who are about to take upon themselves the risk of her safe arrival at the port of destination..... *ib.*

7. Where cotton is shipped by the agent of the plaintiff, and consigned to J. L., who receives a bill of lading, and about the same time is directed by the agent to turn over the cotton to R. B. & Co., the commission merchants of the plaintiff, and in the meantime the cotton is lost by the perils of the river: *Held*, that having been consigned to J. L. by the shipment, it was protected by his open policy, making insurance *for all whom it might concern* on all cotton in bales shipped, or to be shipped, to the consignment of J. L.

Ballard vs. *Merchants' Insurance Co.* 258

8. It is not of the essence of a consignment that the consignee shall sell or dispense of the property consigned. It is enough if he has a right to receive it, of which the bill of lading is evidence, even if he is directed to deliver it over to another agent to sell for the owner..... *ib.*

9. When an open policy of insurance once attaches to property consigned, the consignee becomes the agent of the shipper, and can do no act to deprive the latter of the right to sue in his own name on the policy..... *ib.*

INTEREST.

1. Interest stipulated in contracts, ought to be allowed in putting these claims on the tableau of distribution of an estate, because it makes part of the debt due to the claimant .....*Patin* vs. *Her Creditors*, 64

2. The price of immoveables producing fruits, bears interest from the time it is due, which is its accessory and forms part of the capital; and the privilege or mortgage of the vendor extends to the accessory or interest as it becomes due on the price.....*Caldwell* vs. *His Creditors*, 265

3. The vendor's privilege is a right growing out of the nature of the contract, inasmuch as the transmission of the property is not perfect until the price is paid; which is composed of the capital and interest. The interest represents the fruits of the immoveable sold..... *ib.*

4. But interest promised in an accordat with creditors to be paid on a privileged debt, is not itself a privileged claim..... *ib.*

5. Interest continues to run and is due on the price of property ceded to creditors under the insolvent laws; and conventional interest is due on claims against an estate, even when there is not a sufficiency for all..... *ib.*

6. Legal interest does not run on a note given for a lottery privilege from maturity, when it is not protested, but only from judicial demand.

M'Guire vs. *Mead*, 311

PAGE.

7. Where interest is stipulated to be paid on the balance of a sum of money as soon as it is demanded, and a delay or refusal to pay; when no demand is shown by the party claiming the interest, it will not be allowed.
Millaudon et al. vs. *Percy et al.* 444

8. Where it was stipulated in a mortgage taken to secure a note, which omitted to mention interest, that the debtors might prolong the payment of part of the note, by paying a discount of one half at the end of the year, to be credited thereon, and on failure to be liable to pay the whole amount, principal, *interest* and costs: *Held*, that the party was bound to pay interest from the time the note became due, without any formal demand, when it had lain over for a considerable time.
Consolidated Association Bank vs. *Foucher et al.* 476

9. In notes given to banks, if no rate of interest is specified, it will be inferred that the contract was made in reference to the charter, and governed by the rate of interest fixed therein..... .... *ib.*

10. Interest cannot be demanded on a note for money loaned, when there is no protest for non-payment, or stipulation that the party failing shall be deemed in default under the 1905th article of the Louisiana Code..... *ib.*

JUDGMENT.

1. The judgment or decree of a court in another state, appointing guardians to minors living there, to prosecute or defend a particular suit here, is not evidence of a general authority in them to sue for and settle a succession inherited by the minors in this state.
Douglas and Wife vs. *Edwards and Wife*, 234

2. But if the judgment of a competent tribunal in another state, confers a general authority on guardians in legal form to represent the minors in all things relating to their property in this state, it will be received as evidence of the authority of the guardians to do all necessary acts here ..... *ib.*

3. The record and judgment of a suit against the plaintiff by a mortgage creditor, under which a tract of land, sold by the former to the defendant, was seized and sold, is admissible in evidence in an action for the return of the price under the plea of eviction.....*Landry* vs *Gamet*, 246

4. A record and judgment of eviction in a possessory action, cannot be offered in evidence in a petitory action between the same parties, or their vendors and warrantors about the same lands..*Jones et al.* vs. *Purvis et al.* 288

5. A judgment obtained by the heirs of the deceased wife against the surviving husband, annulling the adjudication of the property of the succession to him, on the ground of its being paraphernal effects, and illegally sold, will not affect purchasers and mortgagees who derive title from the husband under the first sale and adjudication to him. As to them it is *res inter alios acta*.....*Foutelet et al.* vs. *Murrell*, 291

PAGE.

6. Judgment may be taken on confession of the defendant, without a trial, for the sum admitted to be due and owing; and the right of the plaintiffs will be reserved as to the remainder of their claim which they dispute.....*Parsons et al.* vs. *Suares*, 411

7. Where two plaintiffs sue, and the defendant admits he has a certain sum in his hands which is due to one of them, judgment on this confession can only be taken in favor of the one to whom the debt is admitted to be due and owing..... *ib.*

8. The judgment is the highest evidence of a debt, and the title merges in the judgment; but proof of its discharge may be made by circumstantial evidence as well as by that which is positive...*Abat* vs. *Buisson, Curator &c.* 417

9. The defendants in a judgment who were required to pay a certain sum of money into court for distribution among the stockholders of a bank, may retain in their hands the amount due them as a part of the stockholders who are entitled to a share.....*Millaudon et al.* vs. *Percy et al.* 444

10. A judgment obtained in the United States District Court against the sureties in a paymaster's bond, is domestic, although not examinable in the state courts; but not being revised or reversed by the Supreme Court of the United States, is *res judicata* and conclusive evidence against the parties, of all things adjudged by it. It is admissible in evidence in the case of one of the co-sureties against another, requiring him to contribute his proportion of the whole sum for which all the sureties were condemned.

Rochelle's Heirs vs. *Bowers*, 528

11. The judgment in a suit to which the plaintiff was not a party, does not form *res judicata*, against him; yet when he had notice of the suit, and took an interest to prevent a decision against the defendants, they are exculpated from the charge of neglect or collusion.

Davis vs. *Louisiana Tow Boat Company*, 575

LAND LAWS.

1. The laws of Congress granting settlement or pre-emption rights, give no absolute title in themselves, but only grant a preference in purchasing from the United States government on certain conditions prescribed; and the individual claiming a right under them, obtains a title from the government only by a compliance with all the conditions imposed.

Orillion & Lacroix vs. *Deslonde*, 53

2. The act of congress passed April 12, 1814, granting pre-emption rights to settlers, requires a part of the price of the land to be paid at the time of entering; and where this is omitted, and another purchases the government right, and pays the price even after entry, but before the payment of any part by the first purchaser, he will hold the land..... *ib.*

PAGE.

3. As between the lessor and tenant of a tract of public land, if the latter find the true title is in another, or in the government, he has a right to purchase and hold it, without being considered as acting fraudulently towards his lessor.....*Jones et al.* vs. *Purvis et al.* 228

4. But as relates to purchasers under pre-emption laws, and in ordinary cases, perhaps, a distinction might be made, when the purchaser used the means he had received from his lessor of obtaining by pre-emption, when the latter would have been entitled to the preference under the same law..... *ib.*

LEGISLATIVE PRIVILEGE.

1. The act of the territorial legislature, passed 22d of April, 1806, requiring courts of justice to stop all proceedings against members of the legislature in actual attendance, and who claim their privilege, is not repealed or superseded by the adoption of the constitution of Louisiana.

Bradshaw et al. vs. *Dickson*, 485

2. A member of the legislature in actual attendance, can claim his privilege and stop the proceedings in a trial against him after it has commenced; and a refusal to allow it when claimed, at any stage of the cause, is ground for reversal of the judgment against him..... *ib.*

MANDAMUS.

1. A mandamus will not be awarded to compel the judge *a quo* to grant an appeal from an order or interlocutory judgment, overruling exceptions to the right of a creditor to file an opposition to proceedings in insolvency.

Garcia & Buyo vs. *Their Creditors*, 93

2. The writ of mandamus is provided for in all cases where the law has assigned no relief by the ordinary means, and where reason and justice require some mode of redressing a wrong.

Lallande vs. *President and Directors of Louisiana State Insurance Co.* 326

MASTERS AND OWNERS OF VESSELS.

1. Where the owner of a steam-boat suffered a slave to be employed as a hand on board by the captain, without the authority and consent of the owner, and he was accidentally drowned: *Held*, that the owners of the boat were responsible and liable to pay his value; because by using due diligence they might have prevented the illegal employment of the slave, and did not.....*Strawbridge* vs. *Turner et al.* 213

MINORS.

1. Informalities and relative nullities in the settlement of successions and dispositions of property inherited by minors, must be taken advantage of by the minors themselves. As respects third persons, such transactions are valid.....*Foutelet et al.* vs. *Murrell*, 299

PAGE.

2. Where minor heirs claim a restitution *in integrum*, they are bound to place matters as they were before. If they claim the property in nature or in kind, they must refund the amount received by them on account of it.
Foutelet et al. Murrell, 291

3. The sale of the property of a minor by his curator *ad bona*, when there is no ratification or concurrence of the minor, after he became of age, will be regarded as a nullity.....*Miers* vs. *Bethany*, 374

4. The plea of prescription of ten years' possession, under a just title and sale of minor's property, will not avail, when the entire ten years have not elapsed since the minor became of age..... *ib.*

5. The provisions of the Louisiana Code, article 2297, making the parents of minors responsible for the damages done by their minor children, while under their care, is found under the head of *quasi offences*, and does not relate to the contracts of minors, &c....*Doumeing* vs. *Haydel, Tutor*, &c. 446

6. The emancipation of a minor under the provisions of the act of 1829, gives to him all the power over his property and rights, which appertain to persons of full age.....*Harman et al.* vs. *M'Cawley*, 567

7. Whether the minor is domiciled in the parish where the property inherited by him is situated, or in a foreign country, the Court of Probates of the place where the inheritance lies, must appoint a tutor to administer it. *ib.*

MORTGAGE.

1. When mortgaged property passes by judicial sale into other hands than the mortgagor or judgment debtor, the mortgage attaches to the *price*, and the purchaser takes the property free of incumbrance.
Offutt et al vs. *Hendsley et al.* 1

2. But where a slave is seized and sold by a judgment creditor, and purchased in on a twelve months' bond by the debtor himself, the slave is immediately affected by the mortgage resulting from both the judgment and twelve months' bond..... *ib.*

3. Where a debtor buys in his own property on a twelve months' bond, it is not released from the mortgage resulting from the judgment under which it was sold..... *ib.*

4. A subsequent mortgagee, the vendee of the original mortgagor, having an interest, may discharge all anterior mortgages, and as a matter of right, be subrogated to all the creditor's rights to the mortgaged property..... *ib.*

5. There is no privity of contract between the vendee of a mortgage and the creditor of the original mortgagor..... *ib.*

6. The original mortgage creditor may indulge his debtor with a delay, or in any other manner to facilitate the payment of his debt, without violating the rights of a subsequent mortgage, between whom there is no privity of contract..... *ib.*

PAGE.

7. A mortgage creditor having the vendor's privilege and mortgage, with personal security, and an additional mortgage by a judgment and sale of the mortgaged property on a twelve months' bond, with security, may pursue either of his remedies, by seizure and sale of the property in the hands of a third possessor, or proceed against the sureties.

Offut et al vs. *Hendsley et al.* 1

8. The privileges and mortgages of creditors to property sold at the probate sale of a succession, attach to the price, and the purchaser takes the thing sold free of incumbrance, when these creditors were creditors of the deceased; but if not, then their mortgages follow the property as a real right, into whose soever hands it may come..... *ib*

9. The legal or tacit mortgage of the wife for the restoration of her paraphernal effects attaches to the community property from the time they came into the possession of the husband. Her judgment of separation, although obtained subsequently to a mortgage given on the property by her husband, will hold it to the exclusion of the husband's mortgage creditor.

Patin vs. *Her Creditors*, 64

10. Mortgages executed in New-Orleans, and not recorded in the parish where the mortgagor resides, until after he makes a surrender of his property to his creditors, cannot affect creditors and third persons, who are such at the time of the surrender..... *ib.*

11. The action to annul a mortgage made by a debtor, on the ground of fraud as relates to creditors, must be commenced within a year from the date of the judgment, which the creditor seeking it, has obtained against the debtor.....*Dixon* vs. *Emerson*, 104

12. In an action to annul a conventional mortgage, as made in fraud of creditors, when the pleadings admit the existence of the act importing the mortgage, it is unnecessary to prove it. The only question is, whether the mortgage ought to be annulled, as having been made in fraud..... *ib.*

13. The transferree of a mortgage standing in the name of the original mortgagee may exercise his right of mortgage, on making proof of the transfer, without having the mortgage inscribed in his name.

Rouquette vs. *His Creditors*, 154

14. Where a mortgage is regularly recorded before sale and conveyance of the property in dispute to the defendant, who is third possessor, and before the latter became a creditor of the mortgagor, ought he to be allowed to impeach the validity of the contract of mortgage as against the mortgagee? *Quere?*.....*Deverges* vs. *Lanusse*, 176

15. Where the consideration of the contract of mortgage is impeached by the third possessor of the mortgaged premises, *primâ facie* evidence of the genuineness inherent in the contract itself, coupled with proof of advances of money &c. to the mortgagor by the original mortgagee, will authorise the latter to recover against such third possessor..... 177

PAGE.

16. An inscription of a mortgage made the day before the death of the debtor by one of the creditors, will have effect against all the others, although the succession proves insolvent and insufficient to pay all the creditors.....*Garnier et al.* vs. *Peychaud's succession*, 182

17. Where certain slaves belonging to the community were adjudicated to the widow, the acceptance of a special mortgage by the court of probates, with the advice of a family meeting, in lieu of the legal one, liberates the slaves from the legal mortgage as respects third persons.

Cassanova's Heirs vs. *Avegno*, 192

18. If a purchaser, finding the rights of minors are secured by a special mortgage on the property of their tutor, he is warranted in concluding that the general mortgage has ceased to exist..... *ib.*

19. The mortgage and privilege of the vendor results from the sale itself, although the conditions are prescribed by judicial authority or order of court; and the question to which of the parties litigant the proceeds should be decreed is still left open. The mortgage is conventional, resulting from the sale, and takes effect as soon as it is completed.

Zacharie's Administrator vs. *Prieur et al.* 197

20. Where property in dispute is sold with the consent of the parties, by an order of court, and a mortgage is retained, the purchaser becomes the debtor to him who is decreed to be the true owner. But at the death of the mortgagor in the mean time, and sale of his property by order of the Court of Probates, the mortgage is raised, and the purchaser takes it free of incumbrance. The mortgage attaches to the proceeds in the hands of the administrator..... *ib.*

21. A mortgage which is not recorded in the parish judge's office where the property is situated, until after the death of the mortgagor, cannot have effect against his other creditors, who are such at his death.

Macarty vs. *Bond's Administrator*, 351

NAVIGATING VESSELS.

1 Where a schooner is floating down stream, unable to use her sails, and a steam-boat is running up under full steam, it is incumbent on the latter to show that she made use of all proper means of precaution to avoid a collision, or she will be liable for the damage done, by running down the schooner.....*Sauné* vs. *Tourné & Beckwith*, 428

2. Steam-boats meeting vessels on the river, propelled by wind, should observe different rules of precaution, than in relation to other steam-boats. In such cases, the obvious means to avoid collision, is an alteration in the direction of the steamer..... *ib.*

PAGE.

OBLIGATION.

1. A receipt given for notes to be collected and paid over, or returned when called for, is rather evidence of a mandate than an obligation to pay money, in which the subscriber to the instrument of writing constitutes himself an agent, to secure and receive payment and pay over the sums collected.....*Jouett* vs. *Erwin et al.* 231

2. The necessity of the case does not require that obligors *in solido* should be sued together. To create a new exception in favor of such obligations, would be a violation of positive law.....*Millaudon* vs. *Turgeau et al.*, 547

3. Strictly speaking, the drawer and endorser of a note or bill are not bound jointly, either to the holder or amongst themselves, according to the definition in the code, but only *in solido*..... *ib.*

4. The plaintiff has a clear and adequate remedy by suit, separately against either the drawer or either of the endorsers of a promissory note, because the obligation is not joint, but *in solido*..... *ib.*

PARTNERSHIP.

1. Between the partners of a commercial firm and a clerk, who in addition to his monthly salary is to receive a share of the profits, there is not necessarily any partnership created.....*St. Victor* vs. *Daubert*, 314

2. A clerk on a salary, and allowed a share of the profits, is not thereby constituted a partner, and cannot bind the firm further than the express or implied consent of the partners authorise him..... *ib.*

3. So, a clerk entitled to a share of the profits of a commercial partnership, who collects funds of the firm, cannot retain them under pretence that they are his share of the profits. He may be sued by the firm, and required to disgorge the sum thus received by him..... *ib.*

PLEADINGS.

1. Under the plea of the general issue, evidence of payment will not be received.....*Mortimer* vs. *Trappan's Estate*, 108

2. Compensation or payment must be pleaded to authorise the admission of evidence showing that the plaintiff had received various sums of money, not credited, to a greater amount than the sum sued for..... *ib.*

3. The plea of payment is a peremptory exception, going to extinguish the action, and which is required to be pleaded specially..... *ib.*

4. In an action on a promissory note, payable at a particular place, it is alleged in the petition that the note was duly protested for non-payment, and the protest offered in evidence, shows that payment was demanded at the proper place, a recovery will be had without an *allegation* that payment was demanded *at the place* where the note was made payable.

Voisin's Agent vs. *Jewell*, 112

PAGE.

5. The plea of the general denial which puts at issue all the facts on proof of which rests the plaintiff's right to recover, is not waived by a subsequent plea setting up the defendant's agency as a defence against the action. The two pleas are not inconsistent...*Bloodgood et al.* vs. *Hawthorn*, 124

6. When the question at issue by the pleadings, was, whether a certain engine was delivered as a condition precedent to the defendant's right to take out execution against the plaintiff, or not, no evidence will be received to prove damages for the detention and failure to deliver the engine.

Nicholls vs. *Hanse et al.* 268

7. Where the judgment is for the land *described in the petition as about thirty arpents*, and which is all the plaintiff demanded, he cannot allege error and have the judgment amended, on the ground that on actual admeasurement the land is found to contain a larger quantity.....*Conway* vs. *Winter*, 271

8. The pendency of a suit in the United States District Court to enforce a demand founded on a contract of sale, the validity of which is attacked and its rescission sought, cannot be pleaded as an exception to another suit in the state court, between the same parties for a similar demand, founded on the same contract of sale.....*Hampton's Heirs* vs. *Barrett*, 336

9. Where a person of color alleges, he is free and has been so for many years, he will be allowed to avail himself of any legal evidence in his favor under this plea, without being bound by the pleadings to specific proofs.

Montreuil et al. vs. *Pierre et al.* 356

10. The plea of *litis pendentia* is a dilatory exception, which comes too late after swearing the jury. In order to avail the party, it must show the tendency of another suit between the same parties for the same object, growing out of the same cause of action, before another court of concurrent jurisdiction.....*Weeks* vs. *Flower et al.* 379

PRACTICE.

1. Where a balance is shown to be due by a company to A, who assigns it to B, and the latter sues on it, the company cannot produce in evidence another contract between them and A, to show his failure to perform it; and that he owes them damages.

Hoffman vs. *Pontchartrain Rail Road Co.* 20

2. The defendant cannot set up a claim for unliquidated damages on a contract, in compensation of a liquidated demand..... *ib.*

3. The rules of practice in filing answers to appeals in country cases in the eastern district, tried in New-Orleans, will be relaxed when justice requires it. They are called for trial as they stand on the docket, and if the answer is in when the case is called up, it will be heard.

Patin vs. *Her Creditors*, 64

PAGE.

4. An allegation in the petition that the note sued on, which was payable at a particular place, was duly protested, and the protest offered in evidence showed that payment was demanded at the proper place, a recovery will be had without *alleging* that payment was demanded at the place where the note was made payable.....*Voisin, Agent, &c.* vs. *Jewell*, 112

5. Objections to evidence should be made at once, so as to give the adverse party an opportunity to obviate them or correct his mistakes..... *ib.*

6. Where the answer of the defendant admits the debt claimed, but avers it was contracted while he was in partnership with another person, and there is no proof of the partnership, the plaintiff will recover as on a confession of the debt.....*Baker* vs. *Stewart*, 159

7. In an action on a special agreement for the *price* of putting up a mill, evidence of the *value* of the work and labor done on it will not be admitted; the parties having agreed on the price.....*Morton* vs. *Pollard*, 174

8. Where the plaintiff failed to prove that he done certain work for the defendant, according to an alleged specific agreement, and also failed to show that the work was beneficial to the latter, he cannot recover, either on his contract or on a *quantum meruit*, but will be non-suited.

Duffy vs. *Byrne*, 211

9. In taking judgment by default, and making it final in the absence of any defence, on proving the plaintiff's demand, no evidence can be legally given of a fact not *alleged* in the petition.

Louisiana State Bank vs. *Senecal*, 225

10. When the charge of the judge is pertinent to the issue, and the law is correctly stated, it is no solid objection thereto, that it might have been misunderstood by the jury, and had a tendency to mislead them.

Milne vs. *Pontchartrain Rail-Road Co.* 252

11. The party possesses the right who is apprehensive the charge of the judge has been misunderstood by the jury, to apply for a clearer exposition of the meaning of the court..... *ib.*

12. The fact of a cause being taken up and tried on a different day from that fixed for its trial, is not of itself a fatal error.....*Cooley* vs. *Seymour*, 274

13. A record and judgment of eviction in a possessory action, cannot be offered as evidence of title in a suit where the same parties are concerned, and about the same land, when the action is a petitory one.

Jones et al. vs. *Purvis*, 288

14. A dismissal or discontinuance of a suit, will not be allowed to the plaintiff in cases in which the parties are alternately plaintiffs and defendants, as in a *concurso* and in the case of reconvention....*M'Donough* vs. *Copland*, 308

15. So where a party publishes a monition under the act of 1834, for the assurance of titles acquired at judicial sales, and an opposition is filed to the

PAGE.

homologation of the sale, the plaintiff in the monition cannot discontinue or dismiss his suit.....*M'Donough* vs. *Copland*, 308

16. The proceedings of the court below will be considered as regular, until the contrary appear; and where a case is stated to be on trial of a Friday, it will be presumed to have commenced the day preceding, being the one for which it was fixed for trial,.....*Minor et al.* vs. *Lanbelle*, 323

17. The affidavit of the defendant annexed to his answer, that his signature to the note sued on is forged and counterfeited, will not be permitted to go to the jury as evidence, when not made the basis of some preliminary proceeding.....*City Bank of New-Orleans* vs. *Foucher*, 405

18. The provisions of the Code of Practice, in articles 513, 522, 526, 527, and others, requiring certain forms to be pursued in the trial of a cause, are directory, and a non-compliance with them, when not required at the time by the party complaining, does not import pain of nullity..... *ib.*

19. The party may require the observance of all the forms as far as practicable, which are directed in the trial of a cause; but if, when present, he does not require a rigid compliance with them, and they are substantially complied with, it is not assignable as error, nor sufficient grounds for a new trial..... *ib.*

20. The different modes of proof of handwriting or signatures pointed out by the Code of Practice, are concurrent, and the court is not required to appoint experts for this purpose, unless moved to do so by the party..... *ib.*

21. Objections to interrogatories that they contain leading questions, when the depositions or answers of the witnesses are to be taken on commission, must be made before the commission is forwarded to be executed. *Winn* vs. *Twogood*, 422

22. Where the certificate or caption of the magistrate to depositions is not full and explicit, yet if it appear in substance that the witnesses appeared before him, swore to and subscribed their answers, it will suffice..... *ib.*

23. In a case turning on mere questions of fact, where there are numerous witnesses, and the evidence somewhat contradictory, but the court below being of opinion the weight of the testimony was in favor of the plaintiff, his judgment will be affirmed.....*Sauné* vs. *Tourné & Beckwith*, 425

24. The Supreme Court is made the judge of facts as well as the law, and have to decide on the weight of testimony. Great respect is due to the verdict of a jury on facts, and it will not usually be disturbed; but when this court differs in opinion with the judge *a quo* as to the weight of testimony in a case, his judgment will be reversed.....*Sloo et al.* vs. *Tarbe*, 522

PRESCRIPTION.

1. Where property of a vacant estate has been sold by the surviving partner of a community, and held under a just title, in good faith, *animo*

PAGE.

dominorum for ten years, the claims of the heirs of the deceased partner, who afterwards set up title to the vacant estate, will be barred by the prescription of ten years.....*Davis's Heirs* vs. *Elkins et al.* 135

2. If an inchoate right once begins under the existing laws of prescription, a subsequent prescription law cannot be made so to operate as to destroy it..... *ib.*

3. The law protects rights acquired by third persons to property of an estate, between the time of opening the succession, and the acceptance of the inheritance, when the estate has remained vacant; and among these rights are those acquired by prescription..... *ib.*

4. An instrument of writing acknowledging the receipt of certain notes for collection, and the money to be handed over, or the notes returned when called for, does not come within that class of obligations which are prescribed in five years. No prescription runs against it until some act is done by which a right of action accrues.....*Jouett* vs. *Erwin et al.* 231

5. The plea of prescription of ten years' possession under a just title and sale of minor's property will not avail, when the entire ten years have not elapsed since the minor came of full age before the commencement of suit. *Meirs* vs. *Bethany*, 374

PRINCIPAL AND AGENT.

1. Where the principal sues in his own name, for the price of goods sold and delivered by his agent, and thereby ratifies the sale, it is quite immaterial whether the agent had any authority, originally, to sell or not. *Zino* vs. *Verdelle*, 51

2. The agent who represents his principal in a suit, must have authority to do so, so as to allow all legal proceedings to be carried on contradictorily with him, in order to bind the principal.....*Seymour vs. Cooley*, 72

PROOF OF SIGNATURE.

1. The different modes of proof of handwriting and signatures pointed out by the Code of Practice, are concurrent, and the court is not required to appoint experts for this purpose, unless moved to do so by the party wishing it.....*City Bank of New-Orleans* vs. *Foucher*, 405

2. If a party deny his signature to an act or private instrument of writing, or alleges it to be forged and counterfeited, it must be proven by witnesses who have seen him sign the act, or know his signature from having frequently seen him write. Proof by experts or comparison of handwriting may also be received.....*Plicque & Le Beau* vs. *Labranche et al.*, 559

3. Proof by witnesses of the acknowledgment of his signature by the party charged, is inadmissible, when he expressly denies, or alleges it is counterfeited ..... *ib.*

PAGE.

PUBLIC USE.

1. There is no particular form or ceremony necessary in the dedication of lands or squares in a city to public use. If the assent of the owner is shown, and the land is actually used for the public purposes intended by the appropriation, it is sufficient.....*Gleisse & Holland* vs. *Winter*, 149

2. A corporation can maintain a petitory action to remove nuisances and clear the banks of rivers, by showing that the land or place occupied is a public place, and *destined* to public uses..... *ib.*

REDHIBITION.

1. A malady will be considered incurable, so as to authorise the redhibitory action and rescission of the sale on the part of the purchaser, when it baffles the efforts of regular medical aid, and death ensues within three days after the sale.....*Ory's Syndics* vs. *David*, 59

2. The claim of a purchaser for medical attendance and expenses of burial incurred, relative to a slave, the sale of which is rescinded on account of a redhibitory malady, will be allowed and required to be paid by the seller.... *ib.*

3. In a redhibitory action by the buyer against the seller of a slave, to rescind the sale and restore the price: *Held*, that when the act of sale imports a warranty against redhibitory vices, although it further appears the seller purchased the slave as a notorious runaway, which is shown by reference to the bill of sale from his vendor, yet without a full disclosure of this defect at the time of sale, it does not modify the warranty of the last seller.....*Winn* vs. *Twogood*, 422

RENUNCIATION.—SEE HUSBAND AND WIFE.

RESCISSION OF SALE.

1. In an action for the rescission of the sale of a slave, as fraudulent, for alleged concealment of the vice of drunkenness, by representing her as a good house servant, on the part of the seller, it will not be considered a case of redhibition, but one of fraud.....*Gaillard* vs. *Labat et al.* 17

2. Whether the seller of a slave knew of the existence of the vice of drunkenness and concealed it, is a question for the jury; and judgment rescinding the sale will be affirmed, when the verdict finding the fraud is not so unsupported by evidence as to authorise the court to disturb it..... *ib.*

3. A malady will be considered incurable so as to authorise the redhibitory action and rescission of the sale on the part of the purchaser, when it baffles the efforts of regular medical aid, and death ensues within three days after the sale.....*Ory's Syndics* vs. *David*, 59

PAGE.

4. The claim of a purchaser for medical attendance and expenses of burial, in regard to a slave, the sale of which is rescinded on account of a redhibitory malady, will be allowed, and paid by the seller.

Ory's Syndics vs. *David*, 59

SALE.

1. A judicial sale, made to effect the payment of mortgage debts, has also the effect of transferring the thing sold free and unincumbered of the mortgage previously existing on it, even when sold for a less sum than that for which it was mortgaged.....*Offutt et al.* vs. *Hendsley et al.* 1

2. When mortgaged property passes by a judicial sale into other hands than those of the judgment debtor and mortgagor, the mortgage attaches to the price, and the purchaser takes the property free and unincumbered..... *ib.*

3. But where a slave is seized and sold by a judgment creditor, and purchased in by the debtor on his twelve months' bond, it becomes immediately affected by the general mortgage resulting from the judgment, as well as by the special mortgage given in the twelve months' bond to the sheriff... *ib.*

4. So where a debtor buys in his own property, on a twelve months' bond, it is not released from the original mortgage resulting from the judgment under which it was sold..... *ib.*

5. The sale of property on a twelve months' bond, does not satisfy the judgment or novate the debt; and when the property originally seized and sold on twelve months' credit, is again seized and sold under the twelve months' bond, and fails to satisfy it, any other property of the obligors in the bond may be seized and sold to pay it off.

Reboul's Heirs vs. *Behren et al.* 90

6. Property held in common, cannot be sold under execution issuing against part of the owners. Their interest in the property only, can be seized and sold; and an injunction restraining the sale of the interest of the other owners will be sustained..... *ib.*

7. A sale where the debtor buys in his property on a twelve months' bond, does not cut off previous incumbrances as relates to the debtor himself; nor is his previous title or possession changed by the adjudication.

Fenn vs. *Rils*, 95

8. So the owner who purchases in his property on a twelve months' bond, acquires no new title or right. As to him, it is not legally a sale, but merely a means by which the creditor acquires additional security..... *ib.*

9. And where A sold B one-third of a lot of ground by private act, which was seized by a creditor of A before the act was made authentic and recorded, and bought in by A on his twelve months' bond: *Held*, that a sale of this property to C, under execution issuing on the twelve months'

PAGE.

bond of A, was invalid: *Held also*, that the sale of A to B took effect as to third persons from the time it was recorded, saving the rights such persons had in the meantime acquired to the property.....*Fenn* vs. *Rils*, 95

10. If A sells property of which he is not the owner, and he afterwards acquires title, that title vests at once in his vendee..... *ib.*

11. Where the buyer is deceived by the representations of the seller, in the quality of the article sold, although the defects are such as might be discovered on simple inspection, but if known, it must be supposed the buyer would not have purchased, it is sufficient cause to rescind the sale and recover back the price.....*Williams* vs. *Miller et al.* 129

12. The heirs are not bound to execute notarial acts of sale to property of their ancestor's succession, sold at probate sale. The adjudication forms a complete title.....*Berthoud's Heirs* vs. *Unruh*, 130

13. Those who provoke a sale, are bound to see that its terms are correctly announced. If the terms announced are different from what the law requires, the seller is still bound to comply with them, or the bidder is released from his bid..... *ib.*

14. A notarial act of sale is neither necessary or essential to the purchaser at a judicial sale. The adjudication made and recorded in court, is a complete title to the purchaser. A notarial act may, nevertheless, be useful ..... *ib.*

15. Where certain articles are sold to the defendant, and the seller agrees to put them up for use, and find the materials to do so, and the articles are consumed on the premises of the buyer by fire, before they are all put up, they are at his risk and the loss is his.....*Hunt et al.* vs. *Suares*, 434

16. Where goods were purchased and directed to be sent to the buyer, at a distant place, consigned to a certain commercial house, they paying freight: *Held*, that before delivery either to the buyer or consignees, the sale was not complete, especially as the buyer had not complied with its terms on his part .....*Parmele et al.* vs. *M'Laughlin et al.* 436

17. Where the purchaser at sheriff's sale shows a judgment, writ of execution, and sale to him under them, made by the proper officer, all previous proceedings by the latter are presumed to have been correctly made; but this presumption, like others, yields to contrary proof.
M'Donough vs. *Gravier's Curator*, 531

18. In forced alienations of property, all the formalities of law must be strictly fulfilled, to give validity to the sale..... *ib.*

19. Persons having an interest to cause the alienation of property at sheriff's or other forced sale, to be annulled for want of legal formalities in making it, may claim judicially the rescission of such sale..... *ib.*

PAGE.

20. In forced alienations the property must be described with minuteness and accuracy, so that it can be appraised with such certainty as to ascertain its value, and be sold together or separately to the best advantage.

M'Donough vs. *Gravier's Curator*, 531

21. So, where the sheriff seized property, and described it as "*lands lying between St. Paul and Bertrand streets, in the city of New-Orleans*," and the evidence showed that the ground between these streets had previously been laid off into lots and squares: *Held*, that the description was insufficient, and that the sale under it gave no title to the purchaser..... *ib.*

22. According to the article 702 of the Code of Practice, the sheriff is required to specify the object seized, which must be done in the *return on his writ*, so as to distinguish and specify one object from another..... *ib.*

23. Real or immoveable property in New-Orleans, must be advertised in two newspapers, in the English and French languages, for thirty days, excluding the day when the advertisement commenced and the day of sale, so that thirty entire days may elapse between. The want of this formality is ground of nullity of the sale..... *ib.*

SEIZURE.

1. Where property is seized for a violation of a city ordinance, although the seizure is lawful in its commencement, yet if the city authorities fail to pursue the requisites of the law in advertising and disposing of it, the acts of the officer making the seizure will be considered as a trespass *ab initio*, for which his constituents are responsible.....*Baumgard* vs. *Mayor et al.* 119

SLAVES AND COLORED PERSONS.

1. A slave cannot stand in judgment for any other purpose than to assert his freedom. He is not even allowed to contest the title of the person claiming and holding him as a slave.

Berard, f. w. c. vs. *Berard et al., f. p. c.*, 156

2. A colored person shown to be a *statu liberi* in Pennsylvania, and now past the age at which she was to become free, according to the conditions under which she was held in servitude, and had since resided in another free state, with the consent of her owner, she *is thereby* free.

Phillis, f. w. c. vs. *Gentin*, 208

3. Damages will not be awarded against an innocent purchaser of a colored person as a slave, who recovers her freedom. It would be otherwise against the person who first violated her rights, by selling her as a slave..... *ib.*

4. The master is liable for the acts and injuries done by his slave, acting either by or without his authority or order. He is answerable for

PAGE.

all the damages occasioned by the offence and *quasi* offence committed by his slave, except those done without his order, in which case he may exonerate himself by surrendering the slave to be sold.

Guerrier vs. *Lambeth*, 339

5. The fact of a slave being taken to the kingdom of France or other country, by the owner, where slavery or involuntary servitude is not tolerated, operates on the condition of the slave, and produces immediate emancipation.....*Marie Louise, f. w. c.* vs. *Marot et al.* 473

6. When a slave once becomes free by the operation of the laws and customs of another country or state, to which he was taken by his owner, it is not in the power of the latter ever to reduce him to slavery again..... *ib.*

SELLER AND BUYER—SEE SALE. FRAUD AND SIMULATION.

SEPARATION FROM BED AND BOARD.

1. A solitary instance of ill treatment of the wife by the husband during a long cohabitation, when the origin of it does not appear, and is not aggravated in its character, will not authorise a judgment of separation from bed and board.....*Fleytas* vs. *Pigneguy*, 419

2. Excesses, cruel treatment and outrages on the part of the husband towards the wife, form a legal ground for separation from bed and board, when it is of such a nature as to render their living together insupportable; but the court must judge from the proofs and circumstances, not from the opinions of the witnesses, whether these grievances are of such a character as to render the life of a reasonable woman intolerable..*Tourné* vs. *Tourné*, 452

3. A series of studied vexations and provocations on the part of the husband, without resorting to personal violence, might constitute that degree of cruel treatment and outrages which would form just ground for a separation from bed and board..... *ib.*

4. But the partial treatment of one of the children by the father, and the child's disobedience towards the mother, supposed to result from the father's encouragement, will not be deemed sufficient ground for separation. *ib.*

5. No acts of ill treatment occurring after the inception of suit, can be urged as ground or cause for a judgment of separation..... *ib.*

SURETY.

1. The general provisions of the Louisiana Code, article 3035, excluding judicial sureties from the benefit of the plea of discussion, does not extend and apply to sureties in appeal bonds.....*Chalaron* vs. *M'Farlane et al.* 227

2. From the nature and tenor of the obligation contracted by the surety in an appeal bond, he is not bound to pay until the property of every kind belonging to the principal is first taken, and proves insufficient ..... *ib.*

PAGE.

3. Where a surety signed a blank appeal bond, to be used in a particular way by his principal, who puts it to a different use from that intended, by which the responsibility of the surety is greatly increased: *Held*, that the surety cannot avail himself of this matter, unless it is shown the appellee or obligee of the bond was connusant of the fraud...*Chalaron* vs. *M'Farlane et al.* 227

4. The surety in a bail bond may surrender his principal in execution, at any time before the conditions of the bond are made absolute by a judgment against himself.....*Wakefield* vs. *M'Kinnell* 449

VACANT ESTATE.

1. The word estate, used in the English text of the Civil Code, has the same meaning as the term succession in the French text. It is defined to be "the estate, rights and charges which a person leaves after his death." *Old Civil Code, page* 144, *article* 2.....*Davis's Heirs* vs. *Elkins et al.* 135

2. Vacant estates are to be administered by curators appointed for that purpose. But prescription runs against a vacant estate, though no curator has been appointed..... *ib*

3. A vacant estate is a fictitious being, representing in every respect the deceased, who was the owner of the estate, until the acceptance or renunciation of the inheritance by the heir, and is prescribed against by a lapse of ten years before any act of acceptance..... *ib.*

4. Where property of a vacant estate has been sold by the surviving partner of the community, and held by the purchasers under a just title and in good faith, *animo dominorum*, for ten years, the claims of the heirs of the succession afterwards set up to the property, will be barred by the prescription of ten years..... *ib.*

5. The provisions of the Louisiana Code, articles 934 and 936, calling the heir to the inheritance, and giving him the seizin of the succession immediately on the death of the ancestor, do not destroy the provision concerning vacant estates. No one can be compelled to accept a succession; and until acceptance or renunciation, the rights of the heir as regards the inheritance, seizin and possession, &c. are suspended..... *ib.*

6. The provision of the Civil Code of 1808, defining a vacant succession to be a fictitious being, representing the deceased, is not contained in the Louisiana Code, promulgated the 20th June, 1825..... *ib.*

7. A vacant estate being a fictitious person, representing the deceased, prescription runs against it instead of the heirs..... *ib*

8. The law protects rights acquired by third persons to the property of a vacant estate, between the time of opening the succession and acceptance of the inheritance by the heir; and among these rights are those acquired by prescription..... *ib*

PAGE.

WARRANTY.

1. A city marshal or sheriff who sells property under execution, is not such a warrantor of title as to authorise his being cited as such, and condemned to pay as vendor, on a failure of title.....*Morris* vs. *Abat et al.* 552

2. The marshal or sheriff is responsible in damages to the purchaser who is evicted, for selling a slave or other property without sufficient authority. These officers warrant the correctness and legality of their own acts; and if, by their illegal acts, they cause damages, they are bound to make reparation..... *ib*

WILL.

1. There is no rule of law requiring the names of the witnesses to a will, to be inserted in the caption, or any other particular part of the instrument: it is sufficient if they sign.....*Chardon's Heirs* vs. *Bongue*, 458

2. A mere suspension of the proceedings in making and writing a will, by the notary, for two or three hours, in consequence of the weakness of the testator, or his want of decision, or for time to reflect more maturely on the disposition of his property and affairs, when the notary and witnesses do not leave the house, is not a turning aside to other matters so as to render the will illegal or null..... *ib.*

3. The notary is prohibited from interrogating the testator, or so to shape his inquiries while writing his will, as to suggest a particular disposition of his property. A suggestion of the notary is proscribed as a ground of nullity by the Louisiana Code..... *ib.*

4. A last will and testament should first be admitted to probate, and ordered to be executed by some competent tribunal at the place where the succession is opened, before it can be made the basis of a title or claim to property by those inheriting under it.....*Vidal's Heirs* vs. *Duplantier*, 525

WITNESS.

1. An attorney in fact who sues in his principal's name to recover debts due to him, is a competent witness to prove the plaintiff's demand.
Zino vs. *Verdelle*, 51

2. A witness may refer to a memorandum to refresh his memory relating to the facts he is called to testify about. It is not required that the memorandum be contemporary with the facts: it suffices that it was made by the witness, or another, with his privity, when the facts were fresh in his recollection, and that the reading of it restores them when fading in his memory.....*Riordon* vs. *Davis*, 239

3. A witness will be permitted to refer to a summary of his testimony taken on a former trial, touching the value of certain work which he had

PAGE.

previously examined and approved. This is not for the purpose of reviving his faded recollection of the facts themselves, but to remind him of what he had sworn to on a former trial..... *ib.*

4. If a witness dies before the last trial, his testimony taken on a former trial of the same cause, is admissible in evidence..... *ib.*

5. So the adverse party is authorised to produce the testimony of a witness taken down on the first trial, with a view of showing that it differed from his statements given on the second trial..... *ib.*

6. A witness will be allowed to refer to a report of experts, of whom he was one, which has been set aside, to refresh his memory, when the fact to be proved was, what estimate he had put on the work done; the reference being as to a memorandum deliberately made at the time..... *ib.*

7. Where one of the parties was called as a witness by the adverse party, and his answers on cross-examination objected to as irrelevant and inadmissible: *Held*, that much latitude is allowed in such cases, especially, when the witness shows that he is interested in the question, and that his opinions may be tested by his own actions in apparent contradiction with them.....*Hall et al.* vs. *Ship Chieftain et al.* 318

7. It is no objection to the competency of a witness, that he may be exposed in the course of his examination to have questions propounded to him, the answers to which might subject him to a criminal prosecution. It is his privilege to decline answering them..*Macarty* vs. *Bond's Administrator*, 351